

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

EVERETT LABORATORIES, INC.,

Plaintiff,

v.

RIVER'S EDGE PHARMACEUTICALS,
LLC,

Defendant.

Civil Action No.: 09-3458 (JLL)

ORDER

LINARES, District Judge.

This matter comes before the Court on the motion to dismiss the Amended Complaint [CM/ECF #105] filed by Defendant River's Edge Pharmaceuticals, LLC ("River's Edge" or "Defendant") and the motion to dismiss the Counterclaim [CM/ECF #49] filed by Plaintiff Everett Laboratories, Inc. ("Everett" or "Plaintiff"). No oral argument was heard. Fed. R. Civ. P. 78. For the reasons set forth in the accompanying Opinion,

IT IS this 7th day of April, 2010,

ORDERED that Defendant's motion to dismiss [CM/ECF #105] is DENIED, but that leave is given to file a motion to dismiss with respect to stayed claims when the stay is lifted with regard to the Select-OB litigation; and it is further

ORDERED that Plaintiff's motion to dismiss [CM/ECF #49] is DENIED without prejudice with respect to all counterclaims regarding Select-OB, and that leave is given to re-file a motion concerning those counterclaims when the stay is lifted with regard to the Select-OB litigation; and it is further

ORDERED that Plaintiff's motion to dismiss is DENIED as to Count Three of the Counterclaim; and it is further

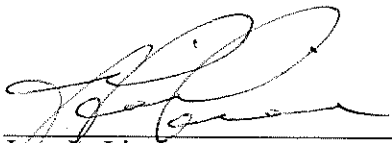
ORDERED that Plaintiff's motion to dismiss is GRANTED as to Count Four of the

Counterclaim insofar as it concerns Plaintiff's VITAFOL product, and that such dismissal is without prejudice; and it is further

ORDERED that Plaintiff's motion to dismiss is GRANTED as to Count Five of the Counterclaim, and that count is dismissed without prejudice; and it is further

ORDERED that as Defendant has voluntarily dismissed Count Six of the Counterclaim, that claim is dismissed with prejudice; and it is further

ORDERED that the Opinion accompanying this Order shall be filed under temporary seal for seven (7) days, after which time it shall be unsealed unless an appropriate motion to seal has been filed, including a proposed unredacted version of the Opinion.



Jose L. Linares
United States District Judge